

Message Text

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PAGE 01 STATE 009831
ORIGIN OPIC-06

INFO OCT-01 EA-07 ISO-00 EB-07 L-03 /024 R

DRAFTED BY OPIC/GC:CHUNT
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EB/IFD/OIA:DHSTEBBING
L/EB:SBOND
INFO:FJOHNSTON:OPIC/ID
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R 150221Z JAN 77
FM SECSTATE WASHDC
TO AMEMBASSY PORT MORESBY

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FROM OPIC

E.O. 11652: N/A

TAGS: EFIN

SUBJECT:(A) PORT MORESBY 1304 (B) STATE 246742

1. HAVE REVIEWED DFAT DIPLOMATIC NOTE NO. 282/77 REPORTED
REF (A). WE ASSUME THAT REFERENCE TO PARAGRAPH (B) IN FIRST
SENTENCE OF NOTE SHOULD BE PARAGRAPH 6(B), INDICATING GPNG
ACCEPTANCE OF CHANGE PROPOSED BY PARAGRAPH 5 REF.(B). NOTE
SILENT ON ELIMINATION OF TERMINATION NOTICE, SO WE ASSUME
GPNG AGREES TO RETAIN THE SIX-MONTH PERIOD SPECIFIED IN
PARAGRAPH 7 OF TEXT PROPOSED BY USG.

2. DFAT NOTE REJECTS USG COUNTER-PROPOSAL TO GPNG PROPOSAL
FOR REVISION OF FIRST SENTENCE OF PARAGRAPH 3 OF PROPOSED
AGREEMENT. CONCERN CITED IN NOTE IS THAT THE TWO GOVERNMENTS
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MIGHT CONFRONT ONE ANOTHER IN A PNG COURT ABSENT A PROVISION
IN THE AGREEMENT REQUIRING EXHAUSTION OF LOCAL REMEDIES BY
THE INVESTOR. SUCH CONCERN IS NOT WARRANTED BY ACTUAL CIR-
CUMSTANCES. JUST AS THERE HAS NEVER BEEN RECOURSE TO THE
INTERGOVERNMENTAL ARBITRATION PROVISIONS IN THE NEARLY
THIRTY YEARS OF THE PROGRAM'S OPERATION, NEITHER HAS THERE
BEEN AN INSTANCE IN WHICH THE USG HAS PURSUED A SUBROGATION

CLAIM AGAINST A HOST GOVERNMENT IN LOCAL COURTS. THE OPIC
COVERAGE WOULD BE LESS EFFECTIVE AS AN INVESTMENT INCENTIVE
IF INVESTORS FACED INDEFINITE AND POSSIBLY LENGTHY DELAY

INVOLVED IN EXHAUSTION OF LOCAL REMEDIES. IN PRACTICE,
THE PERIOD SPECIFIED IN THE CONTRACTS FOR INVESTOR NEGOTIA-
TION OR PURSUIT OF REMEDIES HAS PROVIDED ADEQUATE TIME IN
ALL BUT A VERY FEW CASES FOR DISPUTES TO BE SETTLED
BETWEEN THE INVESTOR AND THE HOST GOVERNMENT - NORMALLY
BY NEGOTIATION.

3. THE POINT SHOULD ALSO BE MADE THAT EVEN THE THEORETICAL
POSSIBILITY OF THE PURSUIT OF A SUBROGATION CLAIM BY OPIC '
IN LOCAL COURTS OUGHT NOT TO BE A CAUSE OF CONCERN. PART
OF THE ADVANTAGE OF THE PROGRAM IS THAT INSURANCE,
ESPECIALLY WHEN OPERATED BY A JURIDICALLY DISTINCT ENTITY
SUCH AS OPIC OR A NON-GOVERNMENTAL UNDERWRITING GROUP
ASSOCIATED WITH OPIC, CAN AND DOES PROVIDE A BUFFER
WHEREBY MANY DISPUTES THAT MIGHT OTHERWISE HAVE TO BE DEALT
WITH ON A FORMAL INTERGOVERNMENTAL LEVEL CAN BE ADJUSTED
MORE IN THE MANNER OF COMMERCIAL INSURANCE PRACTICE. IN
THIS CONTEXT, THE POSSIBILITY THAT THE INSURANCE AGENCY
MIGHT OCCASIONALLY RESORT TO LOCAL COURTS SHOULD NOT BE
SEEN AS A CAUSE OF DIPLOMATIC STRAIN. THE LANGUAGE OF
PARAGRAPH 3 OF THE PROPOSED TEXT ASSURES THAT THE INSURER
WILL NOT CLAIM GREATER RIGHTS THAN THOSE OF THE INVESTOR
UNDER A SUBROGATION CLAIM.

4. THE DFAT NOTE CORRECTLY CITES THE 1963 AGREEMENT WITH
THE UNITED ARAB REPUBLIC AS REQUIRING EXHAUSTION OF OTHER
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CHANNELS OF SETTLEMENT OR CONVERSION PRIOR TO TRANSFER TO
THE USG. THE APPROACH TAKEN IN THAT AGREEMENT WAS EXCPP-
TIONAL (AND OVERLOOKED IN REF.(B) PARA. 3), AS WILL BE
SEEN BY REFERRING TO THE MANY OTHER SUCH AGREEMENTS WHICH
ARE PUBLISHED IN TIAS AND ELSEWHERE. FOR THE REASONS
NOTED, THIS APPROACH IS NOT REGARDED AS SERVING THE
INTERESTS OF EITHER GOVERNMENT.
KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
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Sent Date: 15-Jan-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
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Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
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Disposition History: n/a
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